



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2003

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2003-7161

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189419.

The City of Garland Police Department (the "department") received a request for a specific police report involving a named suspect. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we note the information includes an arrest warrant for an adult and the supporting affidavit. The Seventy-eighth Legislature amended article 15.26 of the Code of Criminal Procedure, which became effective September 1, 2003. Article 15.26 states "[t]he arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information."¹ If the arrest warrant and supporting affidavit in this case were presented to a magistrate, then the department must release both documents to the requestor.

Section 552.101 of the Government Code excepts from disclosure information that is "considered to be confidential by law, either constitutional, statutory, or by judicial

¹Act of May 31, 2003, 78th Leg., R.S., ch. 390 § 1, 2003 Tex. Sess. Laws Serv. 1631 (to be codified as an amendment to Crim. Proc. Code art. 15.26).

decision.” Gov’t Code § 552.101. Included within this exception is information considered to be confidential under section 58.007(c) of the Family Code, which protects law enforcement records and files concerning juvenile conduct that occurred on or after September 1, 1997. Here, the entire police report mentions juvenile conduct that occurred after September 1, 1997. Therefore, the entire police report is confidential under section 552.101 in conjunction with 58.007(c) of the Family Code, and the department must not disclose the report to the requestor.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

²As section 552.101 of the Government Code is dispositive, we do not address your other arguments.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 189419

Enc. Submitted documents

c: Ms. Becky Ruiz
807 Woodland Drive
Garland, Texas 75042
(w/o enclosures)